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<b>F.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 09-1262</b>
	)	<b>Issued: December 15, 2009</b>
	)	
<b>U.S. POSTAL SERVICE, DALLAS BULK MAIL</b>	)	
<b>CENTER, Dallas, TX, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

On May 16, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 23, 2009 denying his request for an additional schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has more than four percent impairment of the left upper extremity and nine percent impairment of the right upper extremity, for which he received a schedule award.

This is the second time this case has been before the Board. In a decision dated November 19, 2008, the Board found the case was not in posture for a decision as to whether appellant was entitled to an increased schedule award due to a conflict in medical opinion between appellant's treating physician, Dr. Ronnie D. Shade, a Board-certified orthopedic

surgeon, who opined that he had 20 percent bilateral upper extremity impairment, and the second opinion physician, Dr. Richard N. Brown, a Board-certified physiatrist, who opined that he had four percent impairment of the left upper extremity and nine percent impairment of the right upper extremity. The Board remanded the case to the Office for an impartial medical examination to resolve the conflict. The facts and the law contained in the Board's November 19, 2008 decision are incorporated herein by reference.<sup>1</sup>

On remand, the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. John A. Sklar, a Board-certified physiatrist, for an impartial medical examination in order to resolve the conflict in medical opinion. In a February 23, 2009 report, Dr. Sklar reviewed the entire medical record and provided a history of injury and treatment and examination findings. Appellant had normal wrist range of motion bilaterally; flexion was to 60 degrees, with extension to 60 degrees, radial deviation to 20 degrees, and ulnar deviation to 20 degrees bilaterally. Two-point discrimination was decreased in the right hand at one centimeter at the median and ulnar distribution. In the left hand, two-point discrimination was six millimeters. Appellant described generalized pain in the bilateral hands and forearms, greater on the right side than on the left and tenderness over his bilateral carpal tunnel syndrome scars. Phalen's test was positive bilaterally. Applying Tables 16-10 and 16-15 at pages 482 and 492 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Sklar concluded that appellant had 16 percent right upper extremity impairment and 2 percent left upper extremity impairment. However, he opined that these impairments were not causally related to his accepted conditions.

Dr. Sklar found 14 percent impairment for sensory deficit in the distribution of the right median nerve (39 percent maximum for the median nerve (Table 16-15) multiplied by 35 percent for Grade 3 for deficient two-point discrimination (Table 16-10), resulting in 14 percent deficit (13.65 percent rounded)). He found 2 percent impairment for sensory deficit in the distribution of the right ulnar nerve (7 percent maximum for the ulnar nerve (Table 16-15) multiplied by 35 percent for Grade 3 deficit (Table 16-10), resulting in 2 percent deficit (2.45 percent rounded)) for a combined right upper extremity impairment of 16 percent. Noting that appellant had no similar neurologic impairment on the left, Dr. Sklar determined that appellant was entitled to 2 percent impairment rating for pain in the left upper extremity according to page 573 of the A.M.A., *Guides*.

In support of his opinion that appellant's upper extremity impairment was not causally related to his accepted condition, Dr. Sklar stated that electrodiagnostic testing performed after his 2006 carpal tunnel release surgeries provided absolutely no evidence of persistent cubital or carpal tunnel syndrome. He noted that the fact that sensation in both the median and ulnar distribution remained unchanged was evidence for a peripheral neuropathy, rather than of persistent carpal tunnel syndrome. Dr. Sklar opined that appellant's ongoing complaints were due to a combination of degenerative joint disease in the hands and peripheral neuropathy due to diabetes, neither of which are work-related conditions. He stated that maximum medical improvement should have occurred within three months of his second surgical procedure, which occurred on December 1, 2005.

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<sup>1</sup> Docket No. 08-1205 (issued November 19, 2008).

The Office forwarded the February 23, 2009 report to an Office medical adviser for review. Based on Dr. Sklar's findings, on March 18, 2009 the medical adviser concluded that appellant had 16 percent impairment of his right upper extremity and 2 percent impairment of his left upper extremity pursuant to the A.M.A., *Guides*. However, he opined that the impairment was not causally related to appellant's accepted conditions, noting that postoperative electrodiagnostic testing was normal. In a March 21, 2009 report, an Office medical adviser stated that there was no probative medical evidence to support that appellant's upper extremity impairment was due to his job-related injury, rather than to degenerative joint disease of the hands and diabetic neuropathy.

By decision dated March 23, 2009, the Office denied appellant's request for an increased schedule award, based on Dr. Sklar's well-reasoned report. It found that the impartial medical examiner's report, which was entitled to special weight, was sufficient to resolve the conflict in medical opinion, and established that appellant had no upper extremity impairment due to his work-related injuries.

### **LEGAL PRECEDENT**

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.<sup>2</sup> It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.<sup>3</sup>

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup> Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.<sup>7</sup>

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<sup>2</sup> Roger W. Griffith, 51 ECAB 491, 505 (2000).

<sup>3</sup> Gloria J. Godfrey, 52 ECAB 486, 489 (2001).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

## ANALYSIS

In accordance with the Board's instructions, the Office referred appellant to Dr. Sklar in order to resolve the conflict in medical evidence as to the degree of appellant's upper extremity impairment. In his February 23, 2009 report, Dr. Sklar reviewed the entire medical record and provided a history of injury and treatment, as well as detailed examination findings. He found normal wrist range of motion bilaterally. Flexion was to 60 degrees, with extension to 60 degrees, radial deviation to 20 degrees, and ulnar deviation to 20 degrees bilaterally. Two-point discrimination was decreased in the right hand at one centimeter at the median and ulnar distribution. In the left hand, two-point discrimination was six millimeters. Appellant described generalized pain in the bilateral hands and forearms, greater on the right side than on the left and tenderness over his bilateral carpal tunnel syndrome scars. Phalen's test was positive bilaterally. Applying Tables 16-10 and 16-15 at pages 482 at page 492 of the fifth edition of the A.M.A., *Guides*, Dr. Sklar concluded that appellant had 16 percent right upper extremity impairment and 2 percent left upper extremity impairment. However, he opined that these impairments were not causally related to his accepted conditions, noting that postsurgical electrodiagnostic testing provided absolutely no evidence of persistent cubital or carpal tunnel syndrome. Dr. Sklar explained that the fact that sensation in both the median and ulnar distribution remained unchanged, was evidence for a peripheral neuropathy, rather than of persistent carpal tunnel syndrome. He opined that appellant's ongoing complaints were due to a combination of degenerative joint disease in the hands and diabetes-related peripheral neuropathy, neither of which are work-related conditions.<sup>8</sup>

The Board finds that Dr. Sklar's opinion was based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record and statement of accepted facts, physical examination and negative test results, he found that appellant did not have any permanent impairment due to his accepted conditions. Dr. Sklar's well-rationalized report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist. The Board, therefore, finds that appellant has not established that he has more than four percent impairment of the left upper extremity and nine percent impairment of the right upper extremity, for which he received a schedule award.

On appeal, appellant argues that Dr. Sklar's report is insufficient to resolve the conflict in medical opinion. For reasons stated herein, the Board finds that Dr. Sklar's report is sufficient to resolve the conflict between Dr. Brown and Dr. Slade, and establishes that appellant is not entitled to an additional schedule award.

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<sup>8</sup> It is well established that, in determining the amount of the schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments are to be included in the evaluation of permanent impairment. See *Eleanor E. Smith*, 53 ECAB 292 (2002); *Lela M. Shaw*, 51 ECAB 372 (2000). Although appellant contends on appeal that he told Dr. Sklar that he had a history of arthritis and diabetes, there is no medical evidence of record establishing that appellant had either a preexisting degenerative joint disease in the hands or a preexisting diabetes-related peripheral neuropathy. Therefore, these conditions should not be included in the evaluation of permanent impairment for schedule award purposes.

### **CONCLUSION**

The Board finds that Dr. Sklar's well-reasoned report constitutes the weight of the medical evidence and resolves the conflict of medical opinion. As appellant has not established that he has more than four percent impairment of the left upper extremity and nine percent impairment of the right upper extremity for which he has received a schedule award, he has not establish that he is entitled to an additional schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board